

JUDGE McMAHON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE ROYALTY NETWORK INC.,

Plaintiff,

v.

OM RECORDS, LLC, PYRAMID
INTERACTIVE, INC d/b/a OM
RECORDS, ALTERNATIVE
DISTRIBUTION ALLIANCE, and
CHRISTOPHER SMITH

Defendants.

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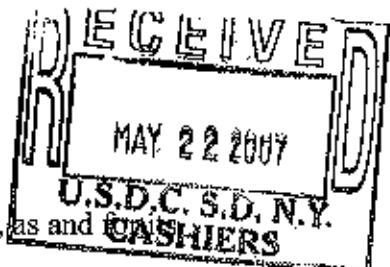
Case No.

'07 CIV 4003

COMPLAINT

DEMAND FOR JURY TRIAL

ECF CASE



Plaintiff, The Royalty Network Inc., by its attorney, Anthony Motta, as and on behalf of the Plaintiff, alleges the following:

PARTIES

1. Plaintiff, The Royalty Network Inc., is a New York corporation with its principal place of business at 224 West 30th Street, Suite 1007, New York, New York 10001.
2. Upon information and belief, Pyramid Interactive, Inc. is a California Corporation doing business as Om Records with its principal place of business in San Francisco, California.
3. Upon information and belief, the defendant, OM Records, LLC, is a California limited liability company with its principal place of business in San Francisco, California.
4. Upon information and belief, OM Records is a record company that compiles, manufactures, promotes and causes to have distributed compilation recordings that embody multiple master recordings of phonorecords and the underlying song writing copyrights embodied thereon.

5. Upon information and belief, the defendant, Alternative Distribution Alliance ("ADA") is a New York partnership having its principal place of business in New York, New York.

6. Upon information and belief, ADA is a distributor throughout the United States of music in Compact Disk, DVD, digital and cassette tape formats and maintains offices and agents at numerous locations throughout the United States including at 72 Spring Street, 12th Floor, New York, New York 10012, 800 Washington Avenue North, Minneapolis, MN 55401 and 3300 Pacific Avenue, Burbank, CA 91505.

7. Upon information and belief, at all times herein relevant, ADA has acted as a distributor for OM Records.

8. Upon information and belief, the defendant, Christopher Smith ("Smith") resides in San Francisco, California, and at all times relevant herein was an officer, and/or director and/or shareholder of Pyramid Interactive, Inc. d/b/a OM Records ("Pyramid").

9. Upon information and belief, the defendant, Christopher Smith ("Smith") resides in San Francisco, California, and at all times relevant herein was an officer, and/or director and/or shareholder of OM Records, LLC ("OM").

10. To the extent that the copyright infringements alleged below were committed by or in the name of Pyramid and/or OM, Smith participated personally in the infringing acts and/or used Pyramid and/or OM to carry out his willful and deliberate infringements and/or determined the corporate policies of Pyramid and/or OM that resulted in the infringements and/or derived financial benefit from the infringing activities.

JURISDICTION

11. This court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§1331 and 1338.

VENUE

12. Venue of this case is proper in this district pursuant to 28 U.S.C. §§1391(b) and 1400.

CLAIM FOR COPYRIGHT INFRINGEMENT

13. Annexed hereto as Exhibit A is a list setting forth, *inter alia*, song titles (the "Songs"), the publisher, or entity owning or controlling the copyright in each of the Songs (collectively the "Publishers"), the percentage interest of each of the Publishers in the Songs, and the writer and artist of each of the Songs.

14. Upon information and belief, all of the Songs was authored by a foreign national or foreign nationals not resident in the United States and were first published outside the United States.

15. The following Publishers set forth on Exhibit A have designated and appointed plaintiff as its administrator with the right to collect all royalties, fees and other income derived from each of the Songs. They are:

- a. Defected Music, Ltd.
- b. David Platz Music, Inc.
- c. Westbury Music, Ltd.
- d. AMV Talpa Music

- e. Urbantorque Music Publishing
- f. Blue Print Music Publishing, Ltd..

16. OM Records and ADA arranged for the copying, and/or reproducing, and/or performing, and/or manufacturing and/or distribution of the Songs in multiple formats by including the Songs in a series of musical compilation albums in Compact Disk format, cassette tape format and in DVD format and by arranging and making the Songs available to the general public by digital download. The musical compilation albums, together with the year of releases, are identified in the last column of Exhibit A.

17. By reason of the infringement and threatened infringement of the defendants, OM Records and ADA, plaintiff has sustained and will continue to sustain substantial injury, loss and damage to its rights in the Songs.

18. Further irreparable harm to plaintiff is imminent as a result of defendants' conduct, and plaintiff is without adequate remedy at law. Plaintiff is entitled to an injunction restraining defendants, its officers, directors, agents, employees and representatives and all persons acting in concert with them from engaging in further acts of copyright infringement.

19. Plaintiff is further entitled to recover from defendants the damages sustained by plaintiff as a result of defendants' acts of copyright infringement. Plaintiff is at present unable to ascertain the full extent of the monetary damage plaintiff has suffered by reason of defendants' acts of copyright infringement but believes such damages exceed \$150,000.

20. Plaintiff is further entitled to recover from defendants the gains, profits and

advantages it obtained as a result of their acts of copyright infringement. Plaintiff is at present unable to ascertain the full extent of the gains, profits, and advantages defendants have obtained by reason of their acts of copyright infringement, but plaintiff is informed and believes that defendants have obtained such gains, profits, and advantages in an amount exceeding \$150,000.

21. Alternatively, pursuant to 17 U.S.C. Section 504, plaintiff is entitled to statutory damages of not less than \$750 nor more than \$30,000 for the infringement of each of the Songs, and in the event the court finds the infringement was committed willfully, for statutory damages not exceeding \$150,000 for the infringement of each of the Songs.

WHEREFORE, plaintiff demands judgment:

- a) For a preliminary and permanent injunction enjoining defendants and all persons acting in concert with them from copying, reproducing, performing, manufacturing, promoting, advertising and distributing any of the Songs, or performing any materials that are substantially similar to the Songs, and to deliver to the Court for destruction or other reasonable disposition all such material and means for producing same in defendants' possession or control.
- b) For actual damages and defendants' profits in an amount in excess of \$150,000 to be determined at trial, or alternatively, for statutory damages pursuant to 17 U.S.C. Section 504, plus interest.
- c) For its reasonable attorney's fees and costs.

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d) For such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 22, 2007



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